ANNUAL REPORT

Environmental Review Tribunal

April 1, 2002 to March 31, 2003

104-05515/

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Chair's Message

I am pleased to present this Annual Report which covers the activities of the Environmental Review Tribunal during my first full year as Chair.

I am proud of the accomplishments of the Tribunal members and staff. We met all of the targets and performance measures established in our Business Plan for this year. There was a continuing increase in the number and complexity of our hearings which has resulted in our having to book further into the future. However, by such means as conducting more motions by teleconference and developing and improving our case management system, we were able to use our resources more effectively.

Our mandate from the Ontario legislature is to conduct fair, efficient and impartial hearings, and to render decisions consistent with governing legislation in a manner that preserves and protects Ontario's environment. This Annual Report demonstrates our successful commitment to that mandate.

Ian McPhail Q.C.
Chair

June 30, 2003

The Tribunal's Mandate

The Environmental Review Tribunal was established under the *Environmental Review Tribunal Act, 2000.*

The Tribunal functions as a quasi-judicial tribunal, subject to the rules of natural justice, the requirements of its governing legislation and the *Statutory Powers Procedure Act*. The Tribunal adjudicates applications and appeals under the following statutes: the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Consolidated Hearings Act*, the *Environmental Bill of Rights, 1993* and the *Niagara Escarpment Planning and Development Act*. For an overview of the legislation, refer to Appendix A.

The Tribunal's mandate is to provide an independent review of decisions of the Directors of the Ministry of the Environment, and a fair public hearing process that assesses the merits of proposed development projects, plans or programs that will have an impact on the environment.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints members of the Tribunal as Hearing Officers to conduct hearings and make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC") regarding development permit applications. The NEC appoints members of the Tribunal as Hearing Officers to conduct hearings for the purpose of receiving representations respecting proposed amendments to the Niagara Escarpment Plan, when objections have been made to the proposed amendments, or for the purpose of periodic review of the Plan.

The Environmental Review Tribunal has administrative responsibility for the *Consolidated Hearings Act*. This administrative responsibility is conducted under the designation of The Office of Consolidated Hearings. A Joint Board can be established under the authority of the *Consolidated Hearings Act* in order to eliminate a multiplicity of hearings before different tribunals on matters relating to the same undertaking. The composition of a Joint Board may be drawn from members of the Environmental Review Tribunal and the Ontario Municipal Board. A Joint Board is empowered to hold a hearing to consider all of the matters under all of the acts the proposal is subject to and for which hearings are required.

The principal task of Tribunal members, who are Lieutenant Governor in Council appointees, is to conduct fair, efficient and impartial hearings. Tribunal members must consider all the evidence presented, and make decisions (or recommendations) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. For a profile of the Tribunal members, refer to Appendix B.

Core Businesses of the Tribunal

The Environmental Review Tribunal has four core businesses which are:

1. **Hearings and Decision Making**
2. **Staff Processing of Hearings**
3. **Outreach**
4. **Alternative Dispute Resolution**

1. Hearings and Decision Making

This component is entirely in the hands of the Tribunal members, all of whom are Order-in-Council appointees, and includes hearings held by members and their written decisions.

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on permit development applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members will endeavor to render their decision within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

2. Staff Processing of Hearings

This core business includes all administrative steps necessary to process an appeal/application from the date of first filing through the hearing process to the closure of the file. The Tribunal hears appeals/applications pursuant to seven different statutes. When an appeal/application is received, it is dealt with through one of five different administrative processes. Each process includes:

- screening the appeal/application to assess its compliance with the Act under which it was filed;
- assigning it to the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision and the closure of the file.

3. Outreach

The outreach core business of the Tribunal has both passive and active components.

The passive component consists of a number of initiatives. The Tribunal has created guides (formerly called brochures and flyers) and other publications explaining its role and procedures to be distributed to clients upon request. Also, the Tribunal has created and maintained a website which provides a wide variety of material on an ongoing basis. Website users have 24-hour access to current and historic information regarding the Tribunal and its hearings, including its decisions, forms, relevant statutes, and Rules of Practice. Website users may also view the information presentation on the Tribunal's website.

The active component also includes a number of initiatives. These include staff responses to questions from clients, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. The information sessions are held by the Tribunal to inform the public of the hearing process prior to complex hearings. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. Due to a recognized greater public interest, the Tribunal has included public information sessions as part of the scheduling process for the large number of appeals received pertaining to Certificates of Approval for municipal waterworks. The Tribunal has a Client Advisory Committee of stakeholders to assist in providing feedback regarding new policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by using the form created on the website for that purpose.

4. Alternative Dispute Resolution Services

The Tribunal's senior staff and several of its members have received certified training in Alternative Dispute Resolution and are experienced mediators. Mediation, generally conducted 30 days before the commencement of a hearing, is offered to all parties appearing before the Tribunal, and before the Niagara Escarpment Hearing Office.

The Rules of Practice

At the beginning of fiscal year 2002-2003, the Tribunal had completed a draft set of revisions of its Rules of Practice. The Rules had been posted on the Tribunal's website to invite comments from the public. The proposed revisions had been circulated to the Tribunal's Client Advisory Committee and other organizations such as the Ontario Bar Association, the Canadian Environmental Law Association and other groups interested in environmental hearings. Comments and suggestions were received and considered by the Tribunal. The Tribunal adopted a revised set of Rules, Practice Directions and Guidelines on May 31, 2002. The Rules are available on the Tribunal's website or by paper copy, upon request.

The Rules, Practice Directions and Guidelines remain open to review and revision as circumstances and new legislation may dictate in order to reflect the changing needs of the Tribunal and the public.

The Ministry of the Environment's Review of Certificates of Approval for Municipal Waterworks

In October 2001, Ministry of the Environment staff met with senior staff of the Environmental Review Tribunal to advise the Tribunal of a new initiative that may increase its workload in the coming months. The Ministry of the Environment was reviewing the Certificates of Approval issued under the *Ontario Water Resources Act* for municipal waterworks across the Province.

From January 17, 2002, until March 31, 2002, the Tribunal received 51 new appeals relating to this initiative. Although these appeals were received in the previous fiscal year, staff did not schedule these appeals until early in this fiscal year. As the Ministry had not completed the review of the Certificates, the Tribunal anticipated receiving more appeals in this fiscal year.

The Ministry of the Environment requested that the Tribunal delay scheduling these hearings in order to allow the Ministry time to meet with each of the municipalities who had appealed and to scope the issues raised. This process would permit the parties to make informed submissions in respect of the issues to the Tribunal at the preliminary hearings. Allowing the parties to take the time to meet led to a more focused hearing process and the resolution of many of the issues prior to the hearings. Generally in the Tribunal's process of scheduling hearings under the *Ontario Water Resources Act*, the Tribunal would expect the parties to file all information necessary for scheduling within 15 calendar days and the hearing would be scheduled within 7 days of this filing. Departing from the normal scheduling process increased these timelines but resulted in more agreements amongst the parties, and more efficient hearings in those cases where full agreement could not be reached.

The Tribunal's staff reviewed its case management process for appeals filed under the *Ontario Water Resources Act*. The appeal hearings would be held across the Province. The Tribunal had no way of knowing whether there would be a large public interest. It was decided that the Tribunal would conduct public information sessions and preliminary hearings for appeals on a regional basis. Staff conducted public information sessions to educate the public. These would also provide an opportunity for the public to raise questions. The preliminary hearing would enable the member to establish parties and hearing procedures for the hearing of evidence. This process would maximize the Tribunal's use of resources to meet the needs of the public. The hearing of evidence would then be held in the area of the Province where each waterworks was located. This would maximize convenience and accessibility to members of the public. In order to ensure that the Tribunal communicated consistently, the staff developed a presentation for the public information sessions. Scripts were also developed for members to use at preliminary hearings. The Tribunal advertised public information sessions and preliminary hearings in the local area newspapers.

Due to this initiative, the Tribunal conducted 15 public information sessions for 74 appeal cases filed. At the end of fiscal year 2002-2003, a total of 98 appeal cases were filed under this initiative of which 31 were ongoing and were carried forward into fiscal year 2003-2004.

Client Advisory Committee

The Environmental Review Tribunal's Client Advisory Committee is composed of Stephen Garrod, John Jackson, Ann Joyner, Richard Lindgren, Isabelle O'Connor and Craig Selby. The Committee provides feedback regarding new policies, procedures and general operational issues. The Committee was asked to provide feedback to the Tribunal about its Business Plan, Brochures and Flyers and the revised Rules of Practice.

In-House Learning Program

The Tribunal has continued to conduct the Learning Program for its members and staff. The Learning Program provides half-day workshops and seminars on topics of relevance to the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers. The Tribunal extended invitations to other organizations, which included: the Agriculture, Food and Rural Affairs Tribunal, the Environmental Commissioner's Office, the Ministry of the Environment, the Ministry of Natural Resources and the Niagara Escarpment Commission. For a complete list of the Learning Program's workshops and seminars held in this fiscal year, refer to Appendix C.

Environmental Compensation Corporation

The Environmental Compensation Corporation ("ECC") provided compensation under the authority of the *Environmental Protection Act* to persons who suffered loss or damage as a direct result of an environmental spill. Generally, it was a payer of last resort, as applicants were required to make all reasonable efforts to obtain compensation from the persons responsible for the spill. In June 1997, the *Environmental Approvals Improvement Act, 1997*, was enacted. It provides that no application for the payment of compensation, received after June 3, 1996, for loss or damage directly resulting from a spill shall be processed or paid by the ECC. One outstanding application remains. However, this application cannot be considered until the related civil actions have been completed. The ECC no longer has staff and at the request of the Ministry of the Environment, the Tribunal's former counsel monitors this sole remaining application to assist in its eventual resolution.

Resource Sharing in the Agency Sector

Knox M. Henry, Vice-Chair, is cross-appointed as a part-time member of the Ontario Rental Housing Tribunal ("ORHT"). When the Tribunal has scheduled Mr. Henry to sit hearings in Northern Ontario, ORHT also schedules him to sit hearing days prior to and after the Tribunal's hearings. This reduces travel costs for the government and improves public access to both Tribunals.

The Tribunal's offices are located within the same office tower as the offices of the Ontario Energy Board ("OEB"). As a result of an agreement between both tribunals, the Tribunal receives its Internet and email access through the OEB's connection.

Space adjacent to the Tribunal's offices is occupied by the Ontario Pesticides Advisory Committee ("OPAC"). The Tribunal currently shares resources with OPAC that include the provision of a Local Area Network and systems support and other administrative functions.

These initiatives are part of the Tribunal's overall commitment to sharing resources within Ontario's agency sector.

Tribunal Activities

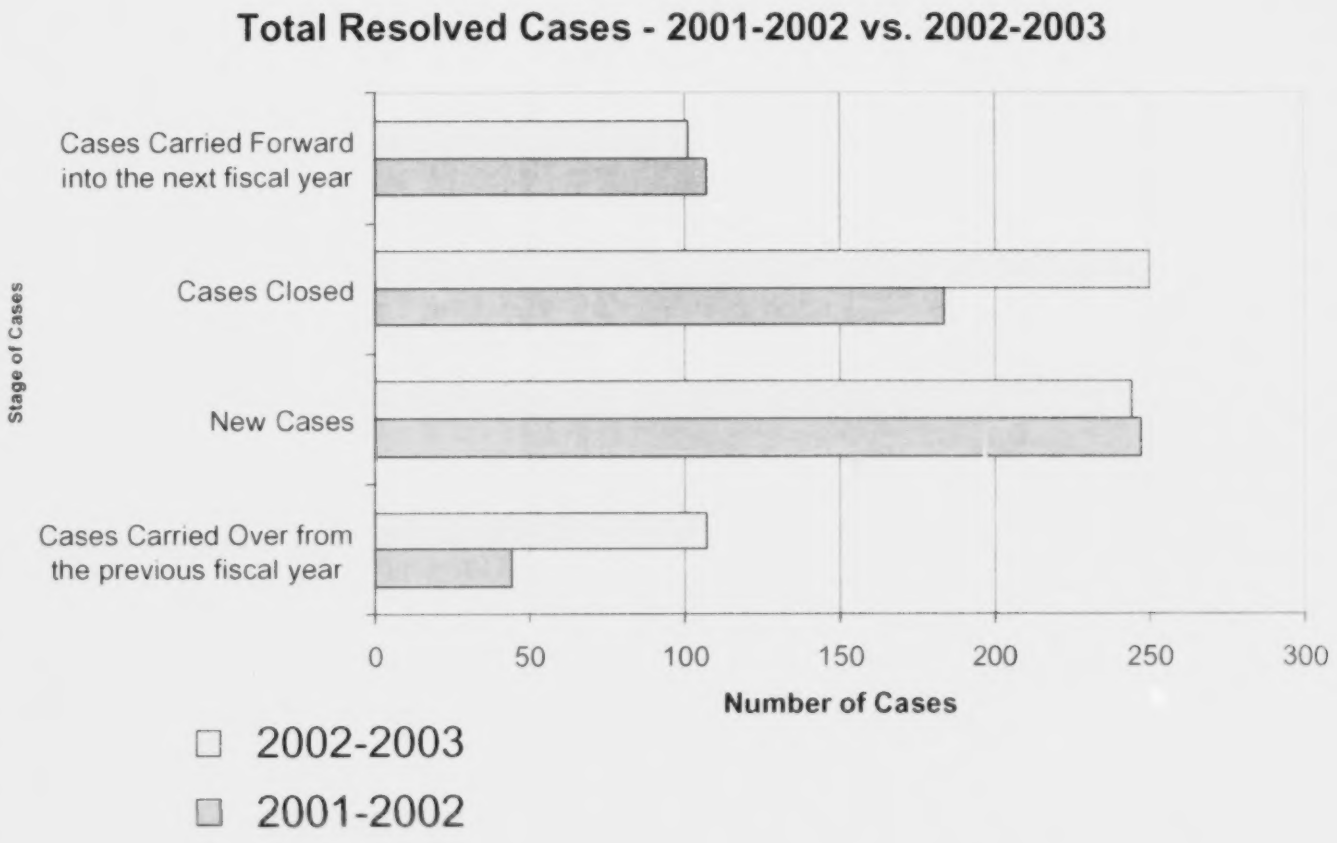
Case Type	No. of Unresolved Cases Carried Forward into 02-03 Fiscal Year	No. of New Cases Received in 02-03 Fiscal Year	No. of Cases Resolved in 02-03 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 02-03 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 02-03 Fiscal Year by Other Means*	No. of Cases Carried Forward into 03-04 Fiscal Year	No. of Hearing Days held in 02-03 Fiscal Year**	No. of Hearing Days held on Motions in 02-03 Fiscal Year	No. of Tribunal Days held on ADR in 02-03 Fiscal Year	No. of Tribunal Days held on Public Info Sessions and Prehearing Conferences in 02-03 Fiscal Year
ENVIRONMENTAL ASSESSMENT ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
ENVIRONMENTAL PROTECTION ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
Appeals	21	72	5	3	53	32	48	45	25	1
ONTARIO WATER RESOURCES ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
Appeals – water Initiatives	51	47	4	0	63	31	65	3	0	15
Appeals – all others	12	40	7	0	28	17	27	13	6	1

Case Type	No. of Unresolved Cases Carried Forward into 02-03 Fiscal Year	No. of New Cases Received in 02-03 Fiscal Year	No. of Cases Resolved in 02-03 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 02-03 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 02-03 Fiscal Year by Other Means*	No. of Cases Carried Forward into 03-04 Fiscal Year	No. of Hearing Days held in 02-03 Fiscal Year**	No. of Hearing Days held on Motions in 02-03 Fiscal Year	No. of Tribunal Days held on ADR in 02-03 Fiscal Year	No. of Tribunal Days held on Public Info Sessions and Prehearing Conferences in 02-03 Fiscal Year
PESTICIDES ACT										
Appeals	0	0	0	0	0	0	0	0	0	0
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT										
Development Permit Appeals	18	69	36	0	38	13	35	4	24	9
Plan Amendment Applications	1	1	0	0	1	1	2	0	0	0
CONSOLIDATED HEARINGS ACT										
Applications	3	2	0	0	1	4	10	0	0	0
ENVIRONMENTAL BILL OF RIGHTS, 1993***										
Leave to Appeal Applications	1	13	9	0	1	4	3	1	0	0
Total	107	244	61	3	185	102	190	66	55	26

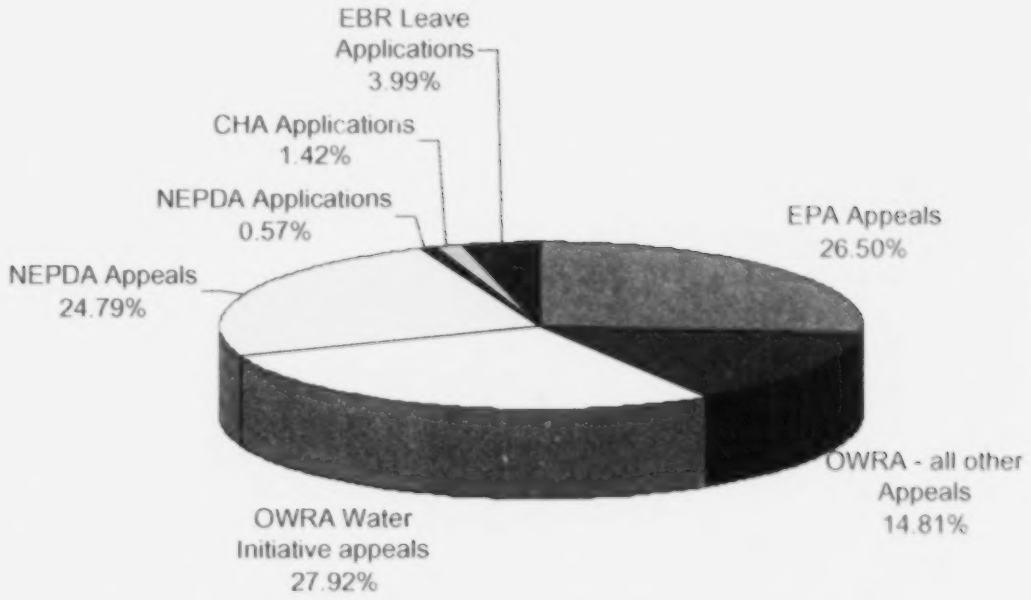
* Resolved by other means include: withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

** Hearing days held include preliminary hearings and hearings.

*** It is the Tribunal's practice to hold written hearings in these matters.


Total Resolved Cases - 2001-2002 vs. 2002-2003
Cases Carried Forward into the next fiscal year
Cases Closed
New Cases
Cases Carried Over from the previous fiscal year
Stage of Cases
0
50
100
150
200
250
300
Number of Cases
2002-2003
2001-2002

Total Cases in 2002-2003 by Case Type



Note: There were no applications referred under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Environmental Assessment Act* and no appeals filed under the *Pesticides Act*.

Consolidated Hearings under the *Consolidated Hearings Act*

The Environmental Review Tribunal has administrative responsibility for the Consolidated Hearings Act ("CHA"). This administrative responsibility is conducted under the designation of The Office of Consolidated Hearing. This fiscal year, there were five cases, of which three had been carried forward from the previous fiscal year and two of which were new.

The following table outlines the legislation under which the Joint Board [1] was requested to consolidate.

Case Name and Case Number	*Niagara Escarpment Planning and Development Act* (Plan Amendment)	*Niagara Escarpment Planning and Development Act* (Development Permit)	*Planning Act*	*Ontario Planning and Development Act*	*Aggregate Resources Act*
Central Milton Holdings Ltd./665497 Ontario Limited (99-036)	•		•		
Graham Bros. Aggregates Inc. (00-128)	•	•	•		•
1442736 Ontario Inc. (01-159)		•	•		
Vineland Quarries and Crushed Stone Limited (02-143)	•		•		
Embee Properties Limited et al. (02-244)	•		•	•	

[1] For further information, refer to The Tribunal's Mandate on page 2 of this report.

Summaries of Selected Decisions of the Tribunal

Environmental Bill of Rights, 1993

Ellen Smith et al. *v.* Director, Ministry of Environment and Energy

In March 2002, the Director issued an order pursuant to the *Environmental Protection Act* to Inco Limited regarding remediation of nickel contamination in Port Colborne, Ontario. The order was based upon a report regarding a human health assessment for the Rodney Street community of Port Colborne respecting soil ingestion. Based upon the report, the Director's order set an intervention level for remediation of 8,000 ppm of nickel in soil for homes within the Rodney Street community.

Seven residents of the targeted community brought an application for leave to appeal under the *Environmental Bill of Rights, 1993* arguing in part that the Director's order exceeds the Ministry's absolute maximum guideline for nickel contamination of 7,100 ppm.

Issue: Should leave to appeal be granted?

Decision: Leave to appeal granted. The Tribunal noted that on a leave application, it did not have to be satisfied that no reasonable person could have made the decision in question, but simply that there is "good reason to believe" that such is the case.

Released: July 11, 2002 (Case No.: 02-018)

Greig et al. v. Director, Ministry of Environment and Energy

This was an application for leave to appeal the Director's decision to grant a Certificate of Approval under s.9 of the *Environmental Protection Act* to Horseshoe Carbons Incorporated to operate a facility to reactivate spent, granular, activated carbon from filters used for water purification in drinking water treatment plants. The applicants' grounds for seeking leave to appeal were based on their contention that the operation should have been dealt with as a waste management site requiring a Certificate of Approval under Part V of the *Environmental Protection Act*. They specifically raised certain issues which they claimed were not adequately addressed in the proposed Certificate of Approval, such as hours of operation and the amount of spent and registered carbon that can be stored on the site and the manner of its storage.

Issue: Should leave to appeal be granted?

Decision: The Tribunal applied the leave test set out in s.41 of the *Environmental Bill of Rights, 1993* and determined that the Director had been reasonable in not requiring a Certificate of Approval under Part V of the *Environmental Protection Act*. The Tribunal did find that the

applicants had satisfied the first part of the leave test in demonstrating that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision to apparently neglect to evaluate whether control of the storage and handling of spent carbon at this facility is required in order to control or prevent the discharge of any contaminant into the natural environment. Despite that finding, the Tribunal found that the second part of the leave test had not been satisfied because there was insufficient evidence to show that the Director's decision could result in significant harm to the environment.

Released: July 16, 2002 (Case No.: 01-247)

Trent River Property Owners Association et al. v. Director, Ministry of the Environment

Three applications for leave to appeal a Permit to Take Water in its entirety were filed in relation to the approval by the Director, Ministry of the Environment of the taking of water from the McCarthy Gravel Pit, County of Simcoe, for a period of ten years in order to pump and discharge water from a proposed new quarry. Residents in the vicinity of the proposed quarry filed the applications for leave to appeal.

The owner of the licensed gravel and sand pit operating on the site wished to begin to quarry the bedrock to a maximum depth of about 20 m over an area of 30 ha. The location has the highest elevation of the water table in the area and is therefore a groundwater recharge site with flow mainly toward Lake Simcoe to the west, and toward the Talbot River to the south.

The Permit to Take Water allows the permit holder to take a maximum of 4,545 litres per minute, amounting to 6,550,000 litres per day, 30 days per year, until October 31, 2012, subject to a number of special conditions.

Issues: Would the pumping of water from the proposed quarry have a significant negative impact on the quantity and quality of water in the wells of residences near the site and did the Director give adequate consideration to the potential impacts on the ecosystem?

Decision: The Tribunal found that the Director's opinion, that the taking of water from the quarry would result in a drawdown of the water table in an area limited to the immediate surroundings of the site, was too conservative an interpretation of the data and modeling. The Tribunal found that the Director's decision could result in significant harm to the environment. In view of these findings, the Tribunal concluded that two of the applicants had satisfied both of the criteria in s.41 of the *Environmental Bill of Rights, 1993* and granted leave to appeal. The Tribunal concluded that the third applicant had not met the criteria for leave to appeal.

Released: January 8, 2003 (Case Nos.: 02-167, 02-168, 02-169)

Niagara Escarpment Planning and Development Act

Kocsis v. Niagara Escarpment Commission

This was an appeal of the conditional approval by the Niagara Escarpment Commission ("NEC") of a development permit application to convert an existing one-storey dwelling to office space for an established winery and vineyard. The appellant owned property in close proximity to the subject property.

The appellant pointed out in his notice of appeal that the residence had already been converted to office space and a wine laboratory. He also alleged that no provisions had been made to control the quality, quantity and rate of storm water run-off that the existing unapproved building and recently added paved parking areas produced.

The representative for the permit holder, supported by the NEC, requested that the appeal be dismissed under s.25(8.1)(a) of the *Niagara Escarpment Planning and Development Act* as it did not raise relevant issues about the development permit itself, only the process. It dealt with an enforcement issue with the NEC and it did not disclose a planning justification for the appeal. The request was denied.

The evidence disclosed that the current owner, after purchasing the property, applied in April 2000 for a development permit to convert the residence to an office. In June 2000, the owner proceeded with her business plans for the conversion. In July 2002, the NEC approved the development permit application.

There was a wine laboratory operating in the lower level of the house. The owner indicated that this arrangement was temporary and that the laboratory would eventually be moved into the new winery building when it was constructed. The NEC was not aware of the operation of the wine laboratory. On a site visit, the basement was not shown. The appellant was concerned about drainage issues in relation to the operation of the wine laboratory.

The appellant argued that a storm water management study should be a requirement of the development permit approval. The parties came to an agreement about the addition of three conditions relating to drainage and operation of the wine laboratory.

Issue: Should the appeal be allowed?

Decision: The decision of the NEC was confirmed with the addition of three conditions agreed upon by the parties.

Released: October 31, 2002 (Case No.: 02-090)

Lansing and Guy v. Niagara Escarpment Commission

In May 2002, a Planner at the Niagara Escarpment Commission ("NEC) received a complaint that road construction and logging were being carried out on two lots in the Town of Mono. On investigation, the Planner discovered that the owner of the lots was in the process of constructing a new laneway and in doing so, was cutting down trees without a development permit for the work. Upon being advised by the Planner that he required a permit, the owner stopped the construction and submitted an application to the NEC for the laneway construction. The NEC conditionally approved the application. David Guy and Paul Lansing, the appellants, appealed that decision.

At the outset of the hearing, the appellants brought a motion to dismiss the decision to approve the development permit application on the grounds that it had been approved based on a flawed application. The appellants argued that the application was flawed because it stated that the two adjoining subject lots were under the applicant's ownership, whereas one lot was owned by the applicant and the other, by his wife. The appellants also disputed that there had been an existing logging road, as the applicant alleged. The Hearing Officer dismissed the motion. He was satisfied that the applicant acted in good faith in filling out the application in his name only. The applicant testified that his wife was fully aware of and consented to the application being made, but could not attend the hearing. On the issue of whether or not the logging road pre-existed the construction, the Hearing Officer concluded that this was an issue for the main hearing.

Issues: Should the development permit be approved given the fact that most of the construction of the laneway had occurred before an application had been made. The appellants alleged that the site contained sensitive wetlands, the applicant was removing trees for profit, approval should await a plan defining all work on the properties, and the existing laneway could be used in the interim.

Decision: The Hearing Officer determined that nothing in the *Niagara Escarpment Planning and Development Act* prevents a development permit being issued after work has been commenced on the project requiring approval. The Hearing Officer has no authority to impose any penalties.

On the basis of the evidence, the Hearing Officer concluded that the new laneway was safer than the existing one and that the proposal was a reasonable one. He also concluded that the trees were not being cut down for commercial purposes. The Hearing Officer accepted the evidence of the NEC's Planner, that the wetlands located on the northwest portion of the subject lots would not be affected by the new laneway because of the distance between the two. Three other agencies supported the construction. For these reasons, the Hearing Officer confirmed the NEC's decision.

Released: February 19, 2003 (Case Nos.: 02-170, 02-171)

Hunter et al. v. Niagara Escarpment Commission

This was an appeal by three applicants from a decision of the Niagara Escarpment Commission ("NEC") to attach certain conditions to a development permit to construct a dwelling, install a private sewage disposal system and a driveway on an existing lot. One of the conditions prohibited certain further improvements despite the fact that improvements were authorized in a previous development permit issued by the NEC. The parties consented to the amendment of this condition. The other condition required a site-specific archaeological assessment of the subject lot and, if required, a portion of a roadway providing access to the subject lot. Between 1990 and 1998, several archaeological investigations found evidence of significant Aboriginal occupation in the vicinity dating to the 17th century. In June 1999, the Cemeteries Registrar issued a Cemeteries Declaration for the immediate area. Based on the evidence presented at the hearing, the Hearing Officer concluded that there was no evidence of burial mounds or depressions on the subject lot.

Issue: Did the Cemeteries Declaration warrant the condition attached to the development permit?

Decision: The decision of the NEC, with the amended condition, was confirmed. With respect to the condition requiring an archaeological assessment, the Hearing Officer stated that there had been conflicting testimony about the extent, reliability and thoroughness of existing archaeological assessments and the work required from the Cemeteries Declaration. He agreed with the imposition of the condition by the NEC requiring an archaeological assessment, which was supported strongly by the Chippewa's of Nawash.

Released: December 11, 2002 (Case Nos.: 02-139, 02-140, 02-141)

Consolidated Hearings Act

Graham Bros. Aggregates Limited

Graham Brothers Aggregates Limited ("Graham") owns approximately 99 hectares of land in the Town of Caledon and is in the aggregate extraction and road construction business. There are two active pits on its property. Graham applied under s.3 of the *Consolidated Hearings Act* to have a Joint Board consider its proposal to proceed with an undertaking, namely to secure access to additional, presently unlicenced, aggregate resources on its property. The undertaking also included developing an integrated operational and rehabilitation plan that comprehensively addresses removal of the additional resources and final site rehabilitation.

The following approvals were required to expand Graham's aggregate extraction activities:

1. Approval of an amendment to the Official Plan for the Town of Caledon to change the designation of the lands from Rural Area to Extractive Industrial Area.

2. Approval of a Category 3 - Class A Aggregate Extraction Licence for a quarry that proposes extraction above the established groundwater table for the lands not currently licensed.

3. Amendment to the Niagara Escarpment Plan to change the designation from Escarpment Rural Area to Mineral Resource Extraction Area.

4. Approval of a development permit to be issued under the *Niagara Escarpment Planning and Development Act.*

Issues: Should the proposal be approved?

Decision: The Joint Board issued an interim decision with respect to a dispute on the permitted hours of operation which ought to be applied as a condition of the issuance of an Aggregate Extraction Licence. There was also an outstanding issue regarding dust mitigation, which ultimately was resolved by the parties who agreed to a dust mitigation plan. The Joint Board therefore found that the proposal, subject to its rulings on hours of operation, constituted good planning, was in the public interest, conformed with the relevant legislation and policies, subject to certain conditions outlined in the decision.

Released: November 27, 2002 (Case No.: 00-128)

Ontario Water Resources Act

The Corporation of the Township of Tiny v. Director, Ministry of the Environment

On December 20, 2000, the Director issued an order pursuant to ss.62(1) of the *Ontario Water Resources Act* directing the Township of Tiny ("Township") to assume operational responsibility of a former private waterworks known as the Renouf waterworks. This private waterworks served 104 households and had been previously noted in non-compliance under applicable water standards. The order also required the Township to submit a long term remedial action plan acceptable to the Director.

The Township appealed.

Issue: What is the appropriate long term remedial plan for the Renouf waterworks?

Decision: At the outset, the Township agreed that the existing Renouf waterworks could not be upgraded and that it would have to be decommissioned. The issue was what should replace the existing waterworks for the 104 households.

The Township had retained the services of a professional engineering firm that identified ten options and presented their pros and cons along with the costs associated with each. The Township endorsed and argued for less expensive small shared and private well systems to replace the existing Renouf waterworks. The Director endorsed and argued for one of three options all of which involved more expensive municipal communal wells.

After some 14 days of hearings and after hearing evidence from a number of people who would be affected by the ruling, the Tribunal directed that the option endorsed by the Township be accepted and implemented. The Tribunal was satisfied after hearing technical evidence that a waterworks comprised of both private and shared wells is capable of providing clean, potable water for its users that is not only safe but also affordable. The Tribunal found that in this case, a municipal waterworks is not necessary and would be an uneconomical expansion of the Township's infrastructure.

Released: May 31, 2002 (Case: 00-153)

Vogelzang v. Director, Ministry of the Environment

This was an appeal under s.100 of the *Ontario Water Resources Act* ("Act") of a Director's order, confirming a provincial officer's order requiring the appellants to undertake certain work respecting the potable water supply system for a mobile home park which they own. It was alleged that s.52 of the Act was contravened.

Two motions were brought by the appellants, one to amend the grounds of appeal and one for summary judgment to allow the appeal on the grounds that there was no jurisdiction for the Provincial Officer to have issued his order.

Issue: Should the motions be granted?

Decision: The Tribunal refused to grant the motion to amend the grounds of appeal because not only was it filed late and therefore contrary to the Rules but it was filed on the eve of the hearing. This prevented the other parties from having an adequate opportunity to respond.

The Tribunal granted the motion for summary judgment. The Tribunal found that there was no jurisdiction for the Provincial Officer to have issued his order, as the waterworks was supplying only a maximum of 15,000 litres per day which does not meet the threshold in s.52 and Regulation 459/00 of the Act that the waterworks be capable of supplying water at a rate greater than 50,000 litres per day.

Released: December 9, 2002 (Case No.: 01-168)

Summaries of Appeals or Judicial Review Applications of Decisions of the Tribunal

OMYA (Canada) Inc. v. The Director, Ministry of the Environment et al.

OMYA (Canada) Inc.("OMYA") appealed the decision of the Environmental Review Tribunal ("ERT") released February 19, 2002, to the Minister of Environment and Energy, as it then was, pursuant to ss.144(3) of the *Environmental Protection Act*.

OMYA raised nine grounds of appeal and sought leave to present new evidence to the Minister. Three of the documents which OMYA wished to be admitted as evidence related to a review carried out by the federal Department of Fisheries and Oceans under the *Canadian Environmental Assessment Act* (Environmental Assessment Screening Reports of the Tay River Intake Project, October 2001 and March 2002) and the subsequent authorization under the *Fisheries Act* to allow OMYA to take up to 4,500 cubic metres of water per day, subject to the conditions set out in the authorization. OMYA had requested that the ERT admit the October 2001 screening report into evidence after the evidentiary portion of the hearing was completed, which request was refused. The Minister admitted into evidence the two screening reports and the authorization because they met the test for the admission of new evidence, i.e., they postdated the ERT hearing, contained credible information and were relevant to one or more of the grounds of the appeal before the Minister. In the Minister's opinion, had these documents been available to the ERT at the hearing, they may have affected the outcome. The Minister found the other documents to be of little weight.

The main issue on the appeal had to do with the quantity of water OMYA would be permitted to take from the Tay River. The Director had issued a "phased" Permit to Take Water, allowing OMYA to take up to 1,483 cubic metres of water per day until January 1, 2004. Prior to that date, OMYA was required to take certain steps, including retaining a consultant to conduct a field investigation program and prepare a scientific report to be provided to the Director and specified government agencies. The Director's permit provided that on and after January 1, 2004, OMYA could increase the amount of water taken from 1,483 cubic metres per day to up to 4,500 cubic metres per day, if the Director authorized the increase. The Director's permit was valid until January 1, 2010.

The ERT substituted for the Director's permit, a permit providing for a maximum taking of 1,483 cubic metres per day, for a period of six years from the date of the ERT decision (to January 1, 2008), with revised and additional conditions. The ERT concluded that there was not enough information or data to satisfy it that a taking of 4,500 cubic metres per day would not cause harm to the Tay River ecosystem.

The Minister allowed the appeal in part.

The Minister decided that the taking by OMYA of up to 4,500 cubic metres per day of water, subject to certain conditions, would not cause harm to the Tay River watershed. The appeal as to

the ERT's finding that there was insufficient information or data to support a taking of that magnitude was allowed. However, the Minister's decision resulted in the Director's phased permit being restored, with the result that OMYA was permitted to take up to 1,483 cubic metres per day of water from the Tay River until January 1, 2004. On and after that date, OMYA may increase the amount of water taken to a maximum of 4,500 cubic metres per day, if and only if the Director authorizes the increase in writing. The request by OMYA for authorization for an increase in taking must be accompanied by evidence to satisfy the Director that it is required and can actually be used.

The Minister restored the duration of the Director's permit.

OMYA objected to certain new special conditions imposed by the ERT. Those conditions dealt with the following: the period of time during which OMYA could continue to take water during a breakdown of the continuous recording equipment within the hydrometric station without authorization from the Director; the requirement that OMYA notify the District Manager of any cessation or commencement in the operation of the continuous recording equipment within the hydrometric station; the requirement to engage the services of an environmental auditor to produce an annual report on water taking to the Director and to persons listed in a schedule to the ERT decision; the requirement for annual meetings to take place as specified. The Minister amended only the conditions relating to reporting and holding annual meetings.

Embee Properties Limited et al. v Niagara Escarpment Commission et al. (March 17, 2003) Court File No. M29365 (Court of Appeal)

On March 17, 2003, the Ontario Court of Appeal refused leave to appeal the decision of the Divisional Court in this matter. A judicial review application had been made to the Divisional Court respecting the decision of a Hearing Officer appointed under ss.10(3) of the *Niagara Escarpment Planning and Development Act*, that he had jurisdiction to proceed with a hearing regarding preparation of an amended Plan for the Niagara Escarpment Planning Area ("Area"). It was argued before the Divisional Court that ss.3(2) of the Act required an investigation and survey as a condition precedent to proceeding with Plan amendment procedures for the Area. The opposing view was that such a requirement only applied initially when the Area was first established. In its reasons released on December 11, 2002 (Toronto Docket No. 218/02), the Divisional Court dismissed the application, finding that the requirement for the Minister to direct the Commission to carry out an investigation and survey applied only to the order made by the Minister to establish the Area.

Report on Performance Measures
Fiscal Year 2002-2003

For fiscal year 2002-2003, the Tribunal adopted nine goals as critical to effective and efficient performance and service quality in its core businesses of Outreach, Alternative Dispute Resolution, Staff Processing of Hearings, and Hearings and Decision Making.

In this fiscal year, the Tribunal met or exceeded the performance measures in each of the nine-targeted areas. For Key Performance Goals and Objectives for the next fiscal year 2003-2004 refer to Appendix D.

Commitment #1: Public Education and Information Sessions

"Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process"

Over the past few years, many of the Tribunal's cases that proceeded to a full hearing process have become more complex. This complexity of cases, coupled with the Ministry of the Environment's initiative to review the Certificates of Approval for municipal waterworks, required the Tribunal to develop ways to educate the public in the hearing process. It is essential to public participation and awareness to offer the services of public information sessions prior to the commencement of the main hearing of evidence in hearings where there is a large public interest. These sessions educate the public on how they can participate in the hearing process.

In order to ensure the public understood the various ways they could participate during a hearing, the Tribunal developed a protocol to effectively identify when public information sessions should be held and how they should be conducted. PowerPoint presentations were developed and presented by staff at public information sessions prior to the commencement of the formal hearing. Notice of these events was advertised in local area newspapers. This fiscal year, the Tribunal conducted 17 public information sessions for 77 appeal cases. A large number of these cases were for the municipal waterworks appeals filed under the *Ontario Water Resources Act*. Staff organized a public information session for many cases in one area to be held in a central location on one evening. This was an effective use of resources and met the public's need to understand the hearing process prior to participating in a hearing. The staff focused their efforts to ensure that interested members of the public were fully briefed about the hearing process. This is highlighted by the fact that there were no public information sessions conducted last fiscal year. In an effort to ensure consistent process at each of the preliminary hearings that followed the public information sessions, standardized scripts were developed.

The Tribunal will conduct public education sessions for groups who have expressed an interest in understanding the Tribunal and its mandate. Public education sessions are different from public information sessions as they are held by request and to groups who want a general overview of our mandate and process. These groups do not intend to appear at an upcoming hearing. Since

the inception of offering this service in 1999, requests by organizations to host a presentation on the general overview of the Tribunal have declined. The Tribunal conducted one session this fiscal year to a representative of the Australian government who was visiting several Ontario agencies. Instead of seeking out numerous invitations as in previous years, the staff put their efforts and resources towards conducting public information sessions prior to complex hearings for individuals and groups who have a genuine interest in understanding the hearing process. This interest may lead to their participation in a hearing that will be held in their community within a few months of the session.

Commitment #2: Website Access

"The Tribunal will use its website to communicate with its clients."

The Tribunal considers its website to be its number one communications channel. The public has embraced the website as the primary way to access information about the Tribunal and its processes. From April 1, 2002 to March 31, 2003, the Tribunal had a total of 16,680 visitors to its site and a total of 465,350 "hits" on specific pages in the site. Five decisions or orders of the Tribunal were downloaded over 1,000 times. Other documents on the website, such as environmental legislation or copies of the Tribunal's Rules of Practice, were also downloaded several thousand times. During the year there were over 90,795 separate downloads of documents from its website. The Tribunal uses a tracking system called "Webtrends" to monitor its website statistics. For a list of the most popular downloads, refer to Appendix E.

The staff update the website three to five times weekly. With the exception of a few hours each month for website maintenance, the website is available at all times. If the gateway for the Ontario Government were not in service, the Tribunal's website would not be operational.

The Tribunal continues to ensure that the public has access to the most current documents available. This year the revised Rules of Practice, Practice Directions and Guidelines, as well as the current published business plan and the annual report were posted within 24 hours of being released.

This fiscal year, the staff undertook a review of the configuration of the website to ensure that it was providing the best access for the user. The Tribunal reexamined how its website users found the information they were looking for quickly and easily. The Environmental Review Tribunal has the mandate to conduct hearings as the Environmental Review Tribunal, the Niagara Escarpment Hearing Office and the Office of Consolidated Hearings. The Tribunal wanted to ensure that the user could find information for the specific type of hearing they required. The website's home page was redesigned to allow the users to access specific information on each of the three hearing functions while still having access to the information common to all three types of hearings, such as the Rules of Practice, Practice Directions and Guidelines. New buttons were added to the home page to provide easier access to the annual reports and the business plans. Previously users had to search under the "What's New" button to find these documents. Users can now click on a button to view all business plans and

another button to view all annual reports available since fiscal year 1999-2000. The Tribunal also incorporated the requirements of electronic service delivery in its website. This is highlighted under *Commitment #6 – Electronic Service Delivery.*

Commitment #3: Brochures and Flyers

"Brochures and Flyers will be updated electronically and in paper form."

During this fiscal year, the Tribunal undertook an overhaul of its brochures and flyers which were developed to educate the public and potential parties, participants and presenters who would become involved in a hearing. The Tribunal had two types of documents for each of the five different hearing processes resulting in 10 different brochures and flyers. The flyer was a quick guide to the hearing process. If a user wanted a more detailed review, they would refer to the brochure.

With the increase in appeals resulting from the Certificates of Approval for municipal waterworks, the Tribunal revised this brochure first. The production and printing of this one brochure was time consuming and costly. The Tribunal undertook to review the purpose and format of these brochures and flyers. A number of issues were considered. When downloaded from the website or in hard copy, the existing brochures and flyers were difficult to read due to the fine print and colourful backgrounds and graphics. In addition, the colourful brochure was more costly to the website user to download compared to a black and white version. The documents had not been updated since their creation. The use of a brochure and a flyer was a duplication of efforts as the brochure was more comprehensive while still compact enough to read. The Tribunal decided to develop one guide for each of the five types of hearings as opposed to one brochure and one flyer. The guides were reviewed to ensure accuracy and consistency. They would be formatted in a PDF format and would be available in black and white with no photographs. This would allow for easier reading and for ease of downloading from the website. More importantly, the guides are maintained by staff and can be updated regularly when changes to the Tribunal's process or changes to legislation warrant. All guides are also available in hard copy, upon request.

Commitment #4: ADR Services

"Offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing."

ADR services are available to all parties in matters before the Tribunal. The Tribunal formally offers these services in every appeal and, upon request, in all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in ADR sessions during the hearing process in 72 cases compared to 35 and 55 cases, respectively, in the last two fiscal years. Of the 72 cases where ADR services were provided, 35 cases were withdrawn or the Ministry of the Environment revoked the instrument which was the subject of the appeal; 21

cases progressed to a full hearing of evidence and 16 cases were still ongoing as of March 31, 2003.

Senior staff and Tribunal members who conducted ADR sessions were certified through an accredited course.

All participants in each ADR session were sent a questionnaire which included questions on their level of satisfaction with the ADR process and the Tribunal's involvement. Of the 25 responses received, the Tribunal scored 96% in overall satisfaction with the ADR process, which exceeded the quantified target of 70%.

Commitment #5: Improve Timeliness in Scheduling Hearings

"Improve the timeliness in scheduling hearings."

The Tribunal adopted a 30 calendar day timeliness standard to issue a Notice of Hearing on appeals, starting on the day on which the appeal/application is received. As the Tribunal developed a different case management process for the scheduling of appeals resulting from the review of the Certificates of Approval for municipal waterworks, these appeals are not included in this performance measure. On all other appeals, the Tribunal met the timeframe as the average time to issue the Notice of Hearing from the date of receipt was 25 days.

The staff exceeded the seven calendar day expectation to schedule an appeal/application after the parties provided all necessary documentation. This year the average was six calendar days. This is the fourth consecutive year in which the staff has met or exceeded these standards. It is also significant to note that, this year, the hearing assistants were new to their positions, and had the responsibility of organizing and administering the hearings resulting from the review of the Certificates of Approval for municipal waterworks which resulted in 98 appeals from January 17, 2002 to March 31, 2003.

In comparison, in the appeals resulting from the review of the Certificates of Approval for municipal waterworks, the Tribunal on average, issued the Notice of Hearing after 43 calendar days of receipt of the appeal and took seven calendar days to schedule the appeal after the parties had an opportunity to discuss settlement of issues and provide the Tribunal with the necessary documentation required for scheduling. For more information concerning the case management process the Tribunal adopted to handle these appeals, refer to *Review of the Certificates of Approval for Municipal Waterworks* on page 5 of this report.

Commitment #6: Electronic Service Delivery (ESD)

"The Tribunal will continue its commitment to ESD."

The Ontario Government mandated that all government offices would implement electronic service delivery initiatives by April 1, 2003. The Tribunal already offered several of its services

by use of the Internet through its website. These services included information on ongoing hearings and the hearing process, copies of the Tribunal's statutes, decisions, Rules of Practice and Guides, as well as other information. In fiscal year 2001-2002, the Tribunal had conducted the Niagara Escarpment Plan Review Hearing. This hearing was divided into two parts, a written phase and an oral phase. During the written phase of the hearing, all written submissions filed, all written questions filed, and all answers to written questions filed for the written phase of the hearing were posted on the website as well as the background plan documents for the hearing.

To meet the full requirements of the government's initiative, the Tribunal launched the ability for the user, if desired, to file appeals electronically and file forms used in the hearing process electronically. The Tribunal was committed to reviewing and modifying its administrative procedures to accept appeals and applications electronically.

The Tribunal's process for filing appeals electronically lent itself to a formal e-filing process where appellants complete forms and attach the required documents. The requirements for filing appeals is more structured than filing applications for hearings. Generally, filing applications for hearings requires the person seeking the hearing to file a letter of application. The hearing process is then driven by oral communication with staff through a teleconference with potential parties and the scheduling of the hearing. In appeal hearings, there is a structured written process where the person seeking the appeal supplies written documents and information to the staff who use this information to schedule hearings.

If users wish to file appeals electronically, they have this option by completing the form on the Internet and submitting it to the Tribunal with attachments. The user has the option of printing or downloading the form and submitting it to the Tribunal by mail, fax or email. At any time in the process, parties have the option of communicating with the Tribunal by mail, email, fax or phone.

Users who wish to file an application with the Tribunal can submit their application by mail, fax or email.

Forms under the Tribunal's Rules of Practice are available electronically in Adobe Acrobat and Word formats. These forms include: Statement of Service, Summons to witness (oral hearing), Summons to witness (electronic hearing) and Notice of Constitutional Question. These forms can all be completed on-line and printed for submission to the Tribunal. In addition, both Summons to witness forms can be filed electronically. The other two forms do not lend themselves to electronic submission. This is due to requirements either for original signatures or service on other parties.

The Tribunal also reviewed the impact of electronic service delivery on the Tribunal's Rules of Practice and Policies. Minor revisions will be required in the next review of the Rules of Practice.

Commitment #7: Courtesy

"Tribunal members will treat all participants in a hearing with courtesy and respect."

Questionnaires were developed and given (along with a self-addressed stamped envelope) to every party and every representative of a party and every participant at a hearing during this fiscal year. These questionnaires continue to be used for a variety of purposes in order to improve the hearing processes. The questionnaires include questions related explicitly to the perception of the parties and their representatives concerning the courtesy of Tribunal members during the hearing process. Of the 19 responses received, the Tribunal scored 100% relating to member courtesy. The number of completed questionnaires returned to the Tribunal has decreased every fiscal year. This may be because every appeal before the Tribunal or the Niagara Escarpment Hearing Office has a party from the Ministry of the Environment or the Niagara Escarpment Commission, respectively, who may find it repetitive to complete the questionnaires after every hearing when no new information is reported.

The Tribunal has a formal policy and process for complaints received from the parties or the public concerning its members. The Tribunal did not receive any formal complaints this fiscal year about the conduct of members at Hearings.

Commitment #8: Decisions

"Tribunal members will render timely decisions."

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on development permit applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members endeavor to render their decisions within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

For the purposes of this performance measure, the criterion was defined as *"Decisions will be rendered within 30 days of final argument, excepting hearings with legislative timelines."* For the fiscal year 2002-2003, the timeliness of decisions rendered was for the decisions under the legislation not noted above. This would include decisions rendered for appeals under the *Environmental Protection Act* and the *Ontario Water Resources Act*. There were no decisions of appeals under the *Pesticides Act* or for applications under the *Environmental Assessment Act* and the *Environmental Protection Act*. For this performance measure the appeals resulting from the review of the Certificates of Approval for municipal waterworks were included as the members

were expected to render their decisions within a 30 day timeframe and there is no legislated timeframe. In 97% of the cases, members released their decisions within 30 days of the final argument.

Commitment #9: Training of members

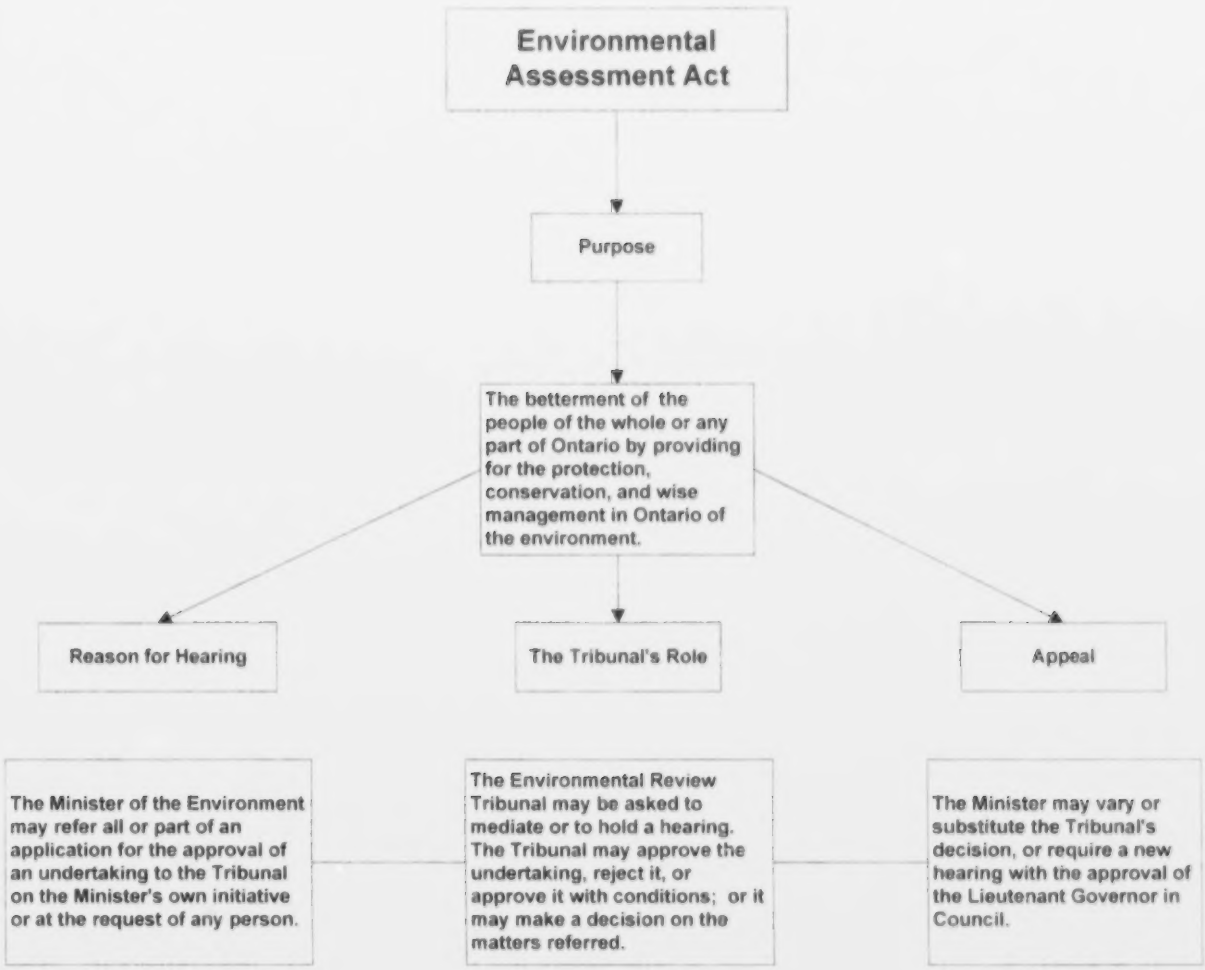
"Members will receive adequate training to conduct hearings."

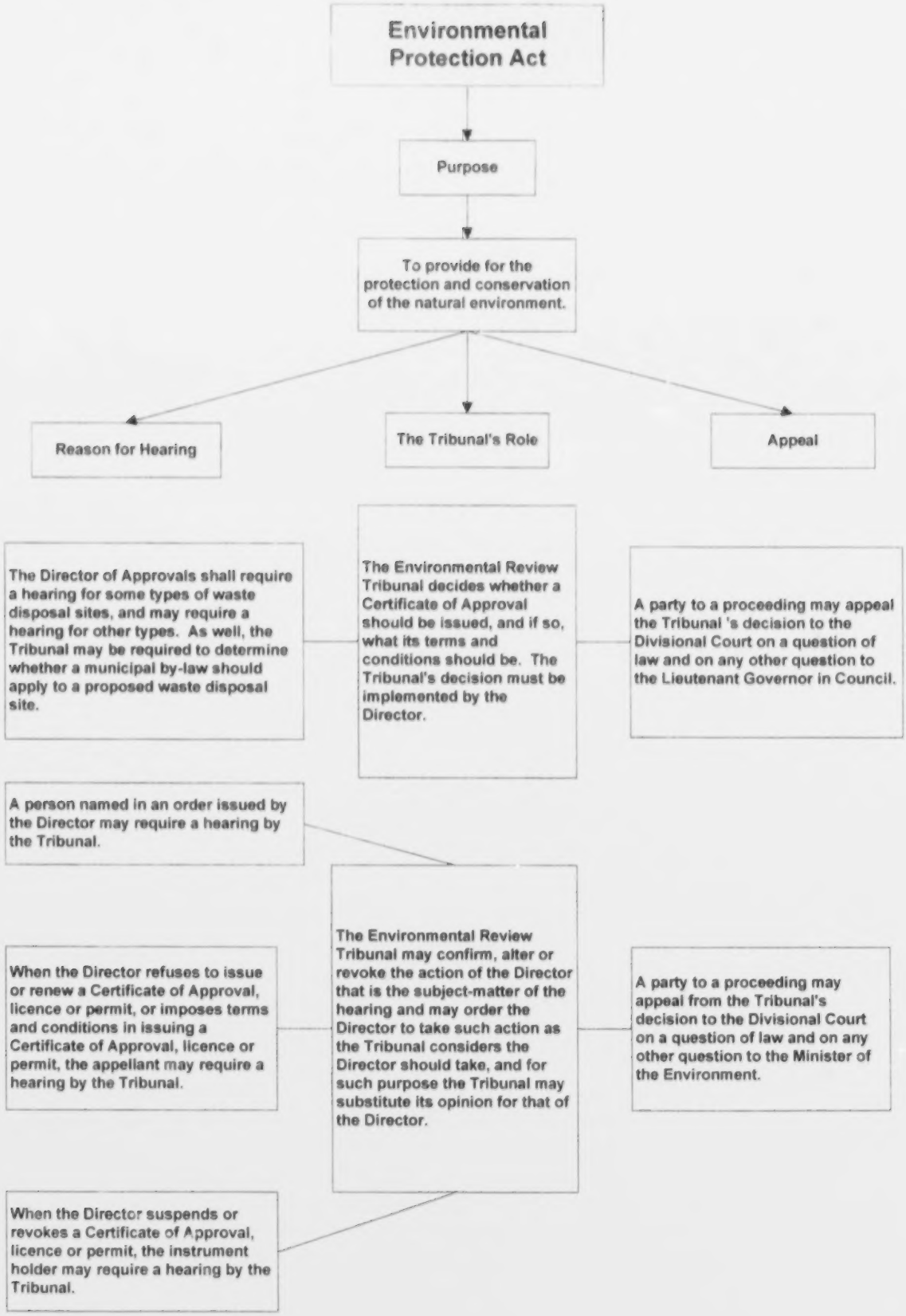
Members are trained in the conduct of hearings, knowledge of legislation, and Tribunal rules, decision writing and alternative dispute resolution. This is achieved in various ways. New members received one-on-one training about the legislation, conduct of hearings, the Rules of Practice and decision writing from in-house staff. Members attend training courses on adjudication and decision writing conducted by the Society of Ontario Adjudicators and Regulators. Stitt, Feld, Handy offers a five day course on alternative dispute resolution which new members attend. Members also attend hearings, first as an observer, then as a member of a hearing panel and finally conduct hearings independently.

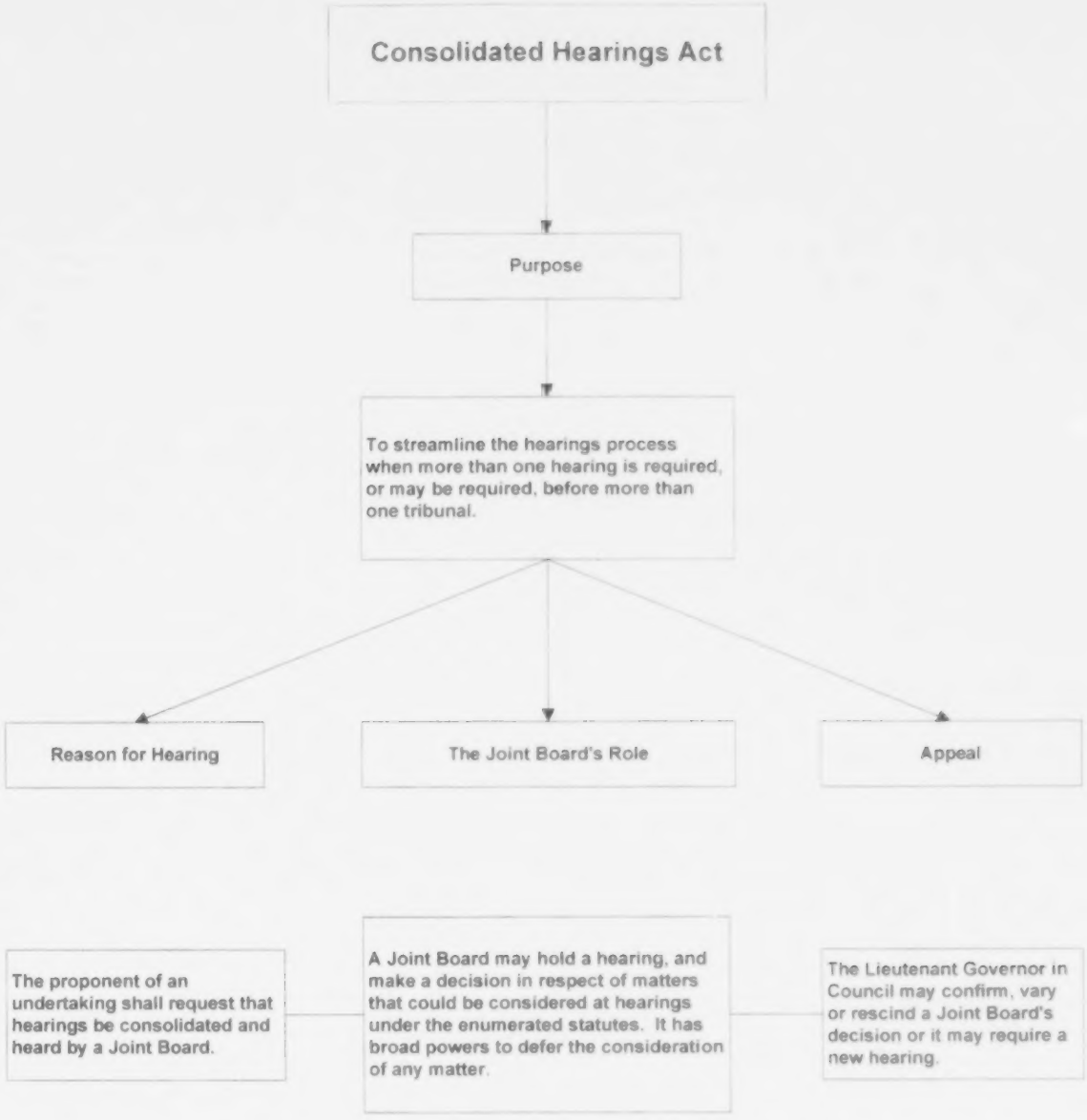
The 2002-2003 commitment to have a new member trained to conduct a hearing independently within one year of appointment was met. Chris Braney, Vice-Chair, was appointed for one year as of February 2, 2003 and was sitting hearings independently at that time.

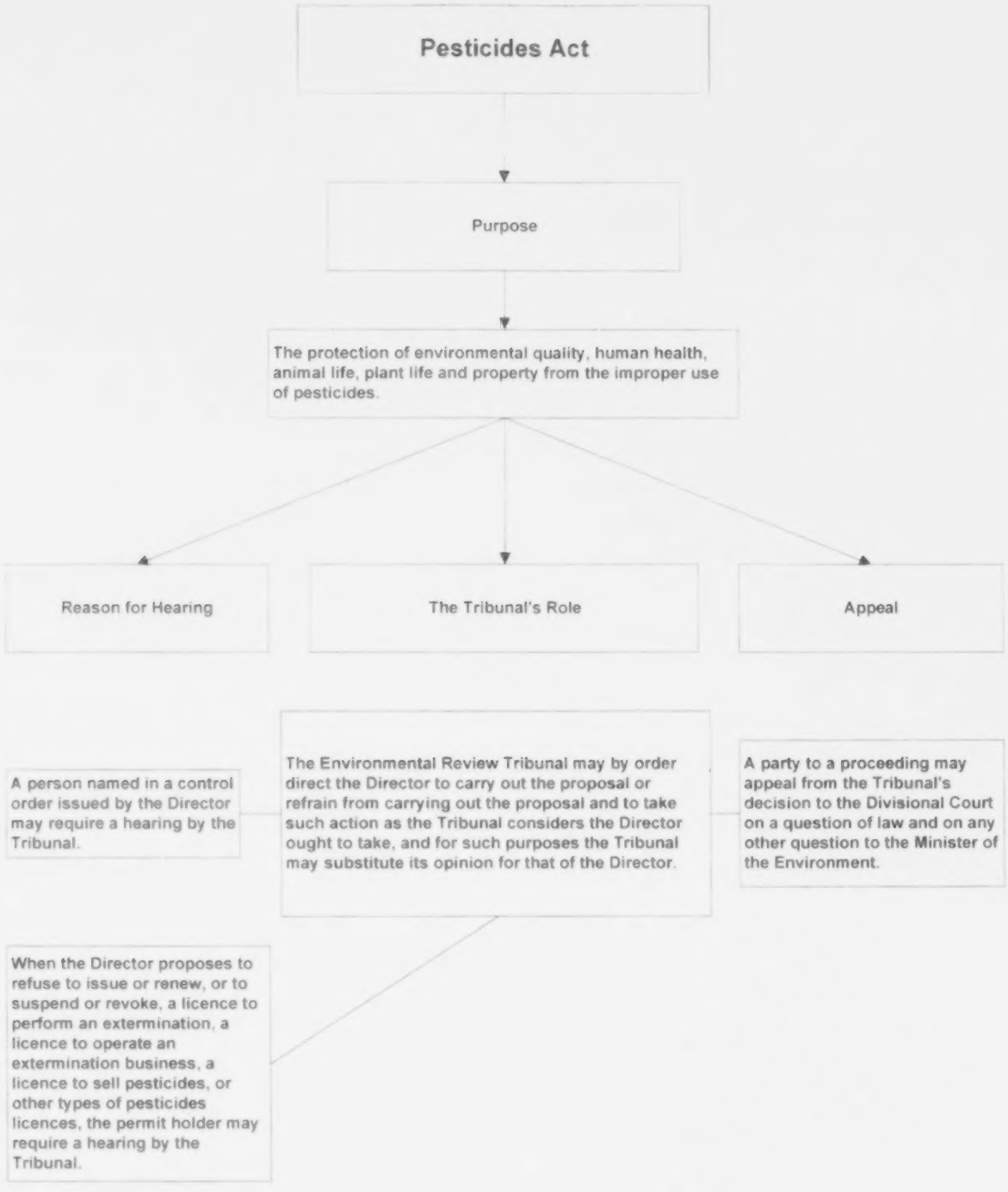
Appendix A

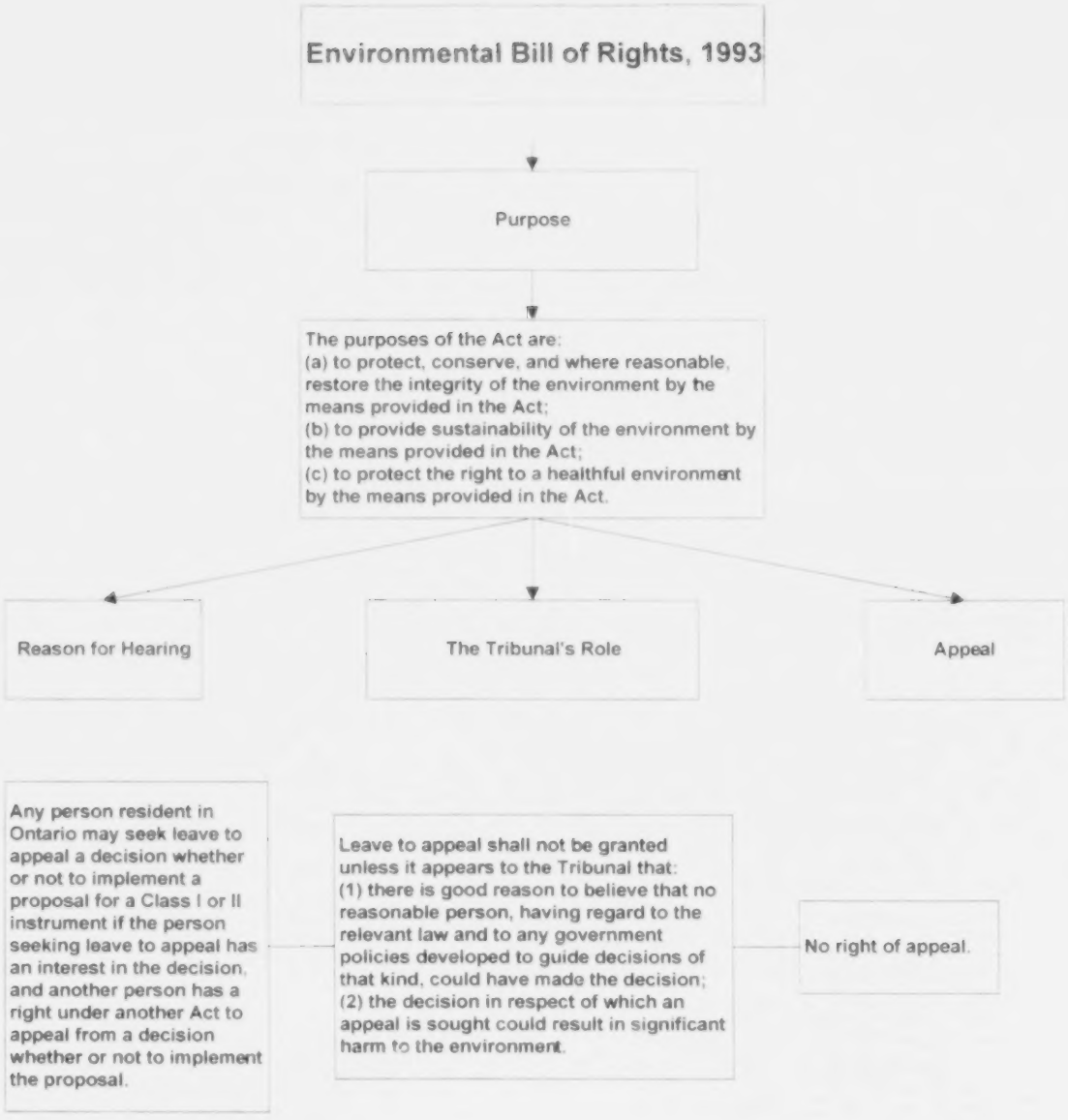
Overview of Relevant Legislation

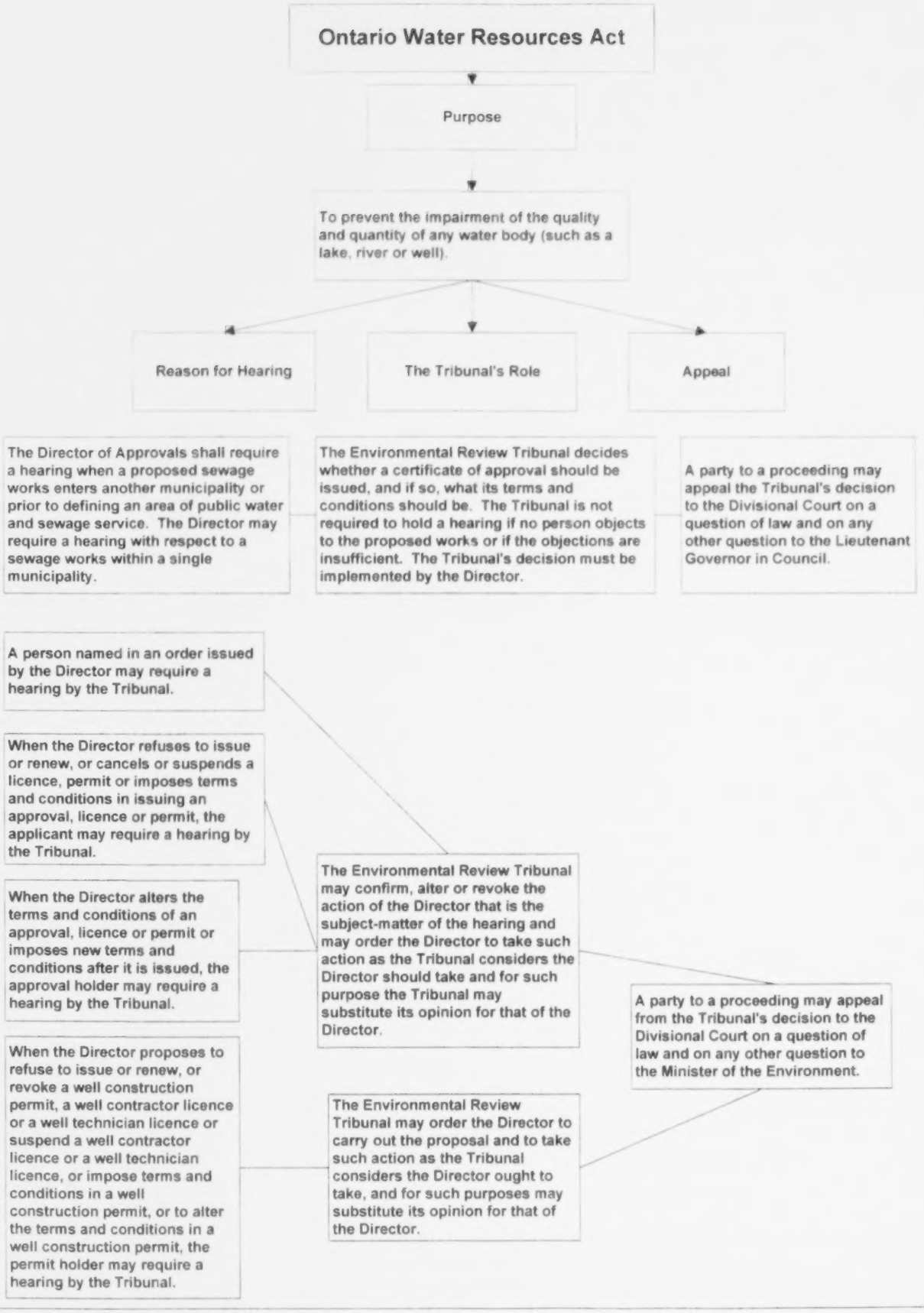

Environmental Assessment Act
Purpose
The betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management in Ontario of the environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Minister of the Environment may refer all or part of an application for the approval of an undertaking to the Tribunal on the Minister's own initiative or at the request of any person.
The Environmental Review Tribunal may be asked to mediate or to hold a hearing. The Tribunal may approve the undertaking, reject it, or approve it with conditions; or it may make a decision on the matters referred.
The Minister may vary or substitute the Tribunal's decision, or require a new hearing with the approval of the Lieutenant Governor in Council.

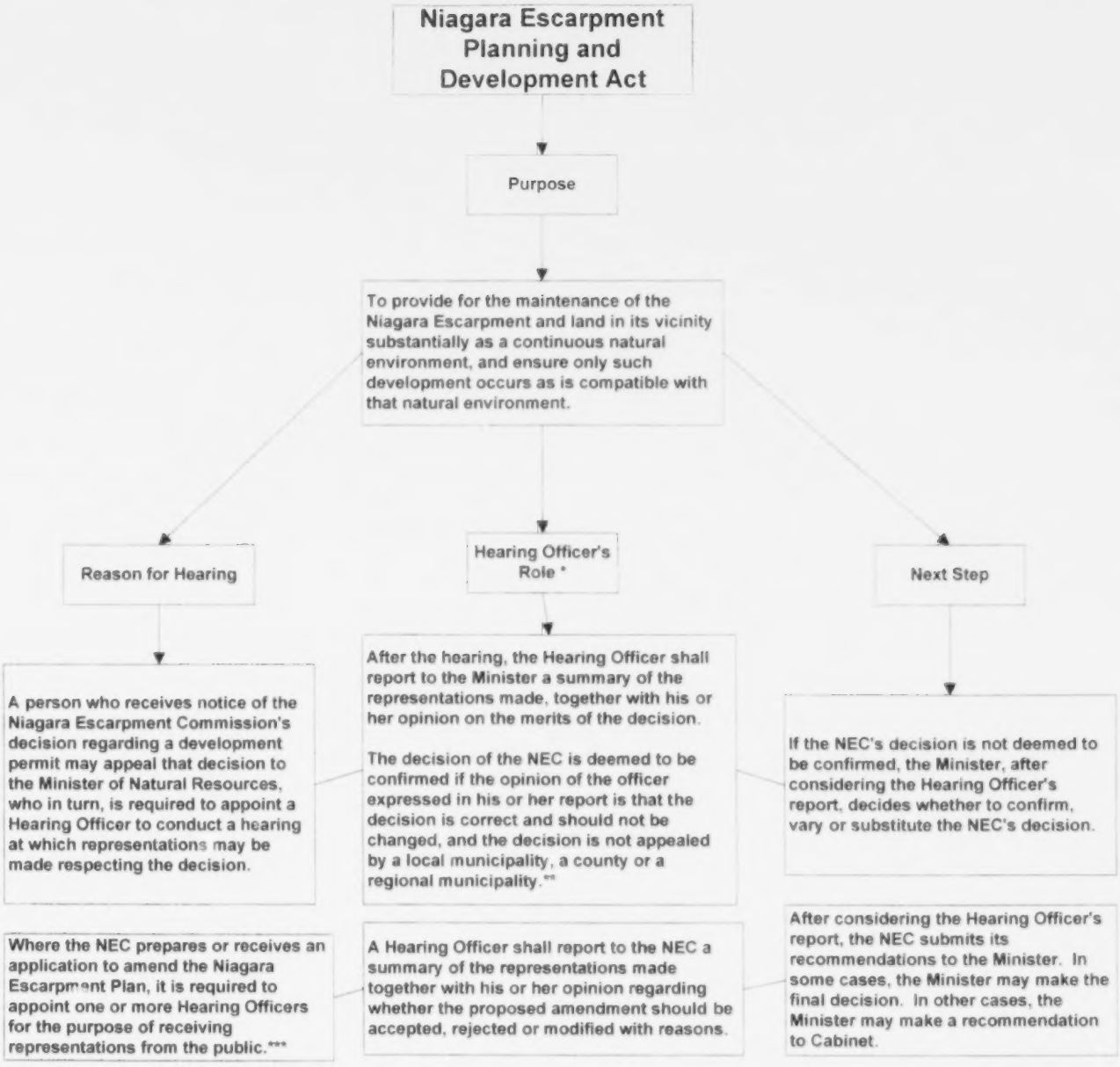

Environmental Protection Act
Purpose
To provide for the protection and conservation of the natural environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing for some types of waste disposal sites, and may require a hearing for other types. As well, the Tribunal may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.
The Environmental Review Tribunal decides whether a Certificate of Approval should be issued, and if so, what its terms and conditions should be. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal 's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew a Certificate of Approval, licence or permit, or imposes terms and conditions in issuing a Certificate of Approval, licence or permit, the appellant may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take, and for such purpose the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director suspends or revokes a Certificate of Approval, licence or permit, the instrument holder may require a hearing by the Tribunal.


Consolidated Hearings Act
Purpose
To streamline the hearings process when more than one hearing is required, or may be required, before more than one tribunal.
Reason for Hearing
The Joint Board's Role
Appeal
The proponent of an undertaking shall request that hearings be consolidated and heard by a Joint Board.
A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter.
The Lieutenant Governor in Council may confirm, vary or rescind a Joint Board's decision or it may require a new hearing.


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides.
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal.
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal.


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act;
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal.
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment.
No right of appeal.


Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, the applicant may require a hearing by the Tribunal.
When the Director alters the terms and conditions of an approval, licence or permit or imposes new terms and conditions after it is issued, the approval holder may require a hearing by the Tribunal.
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit holder may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director.
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.


Niagara Escarpment Planning and Development Act
Purpose
To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment.
Reason for Hearing
Hearing Officer's Role *
Next Step
A person who receives notice of the Niagara Escarpment Commission's decision regarding a development permit may appeal that decision to the Minister of Natural Resources, who in turn, is required to appoint a Hearing Officer to conduct a hearing at which representations may be made respecting the decision.
After the hearing, the Hearing Officer shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.
The decision of the NEC is deemed to be confirmed if the opinion of the officer expressed in his or her report is that the decision is correct and should not be changed, and the decision is not appealed by a local municipality, a county or a regional municipality.**
If the NEC's decision is not deemed to be confirmed, the Minister, after considering the Hearing Officer's report, decides whether to confirm, vary or substitute the NEC's decision.
Where the NEC prepares or receives an application to amend the Niagara Escarpment Plan, it is required to appoint one or more Hearing Officers for the purpose of receiving representations from the public.***
A Hearing Officer shall report to the NEC a summary of the representations made together with his or her opinion regarding whether the proposed amendment should be accepted, rejected or modified with reasons.
After considering the Hearing Officer's report, the NEC submits its recommendations to the Minister. In some cases, the Minister may make the final decision. In other cases, the Minister may make a recommendation to Cabinet.

*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

**Since the proclamation of the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26 (Bill 119) amendments to the *NEPDA*, deemed confirmations can also occur where the parties have reached a settlement on the conditions of the development permit. The decision of the NEC may be deemed confirmed prior to going to the Minister if (a) the decision was to issue a development permit; (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit, and these are set out in the Hearing Officer's report; and (c) it is the Hearing Officer's opinion in the report that the decision to issue the development permit with the agreed terms and conditions would be correct and should not be changed.

***Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.

Appendix B

Profile of Tribunal Members

Chair and Vice-Chairs

Ian McPhail, Q.C., Chair *(appointment expires December 18, 2004)*

- Chair, Environmental Review Tribunal (2001)
- Chair, Alcohol & Gaming Commission of Ontario (2000-2001)
- Director and Vice-Chair, Ontario Educational Communications Authority (TV Ontario) (1996-2000)
- Acting Chair, Ontario Educational Communications Authority (TV Ontario) (1999)
- Chair, Toronto Grace Hospital (1988-1995)
- Appointed federal Queen's Counsel (1992)
- Called to the Ontario Bar (1972)
- Private Law Practice in Toronto (1972-1999)
- Vice-President, Toronto Chinese Community Services Association, and the Sino-Canadian Arts Studies Inc.
- Member, Champlain Society, Empire Club of Canada, Cabbagetown South Association, and other community associations

Bill Balfour *(appointment expires May 5, 2004)*

- Appointed as a Vice-Chair in August 2001
- Appointed as a part-time member in 1999
- BASc in Civil Engineering and MBA from University of Toronto
- OLS (Ontario Land Surveyor) License; Certificate in Financial Planning from Sheridan College
- Principal, Gartner Lee Ltd, Environmental Consultants, (1989-2001)
- Supervisor, Recreational Lakes Program; District Manager for Muskoka, Haliburton and Parry Sound; Coordinator Regional Operations and Laboratories; Director, Approvals and Land Use Planning, Ontario Government (Ministries of Health and Environment), (1970-1989)
- Consulting Engineer with Marshall Macklin Monaghan from 1965 to 1970

Chris Braney *(appointment expires February 2, 2005)*

- Appointed as a Vice-Chair in February 2002
- Member, Ontario Rental Housing Tribunal (1999–2002)
- Director of Marketing for a Toronto-based aerospace company (1997-1999)
- President, West Hill Community Services (1998 – present)
- Vice-Chair, Scarborough Board of Education (1994-1997)

- President and owner of a health and safety products company specializing in hazardous cleanup projects (1990-1997)
- Vice-President, Centennial Community and Recreation Association (1992–1994)
- Director, Variety Club Telethon and Variety Club Tent 28 member (1994-present)
- City of Scarborough Archival and Records Committee (1995-1997); Budget and Woman's Issues Committees for the Scarborough Board of Education (1994 -1997)
- Studied Marketing Management at Centennial College
- Alternative Dispute Resolution, Faculty of Law, University of Windsor

Pauline Browes *(appointment expires January 3, 2005)*

- Appointed as a Vice-Chair in October 1995
- Member, Board of Directors, La Jeunesse Youth Orchestra, Northumberland Country (2001)
- Founder and Curator of the "Spirit of Canada" Art Gallery at Rice Lake, Ontario (1999)
- Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member, Board of Governors, Scarborough Hospital (1994-1999)
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State – Employment and Immigration (1993); Minister of State – Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Chair and member of the Scarborough Board of Health (1981-1983)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)

Knox M. Henry *(appointed "At Pleasure")*

- Appointed as a Vice-Chair in 1991
- Cross-appointed as member of the Ontario Rental Housing Tribunal in 1999
- Cross-appointed as a Deputy Mining and Lands Commissioner (1995-1997)
- Member, Environmental Appeal Board (1978)
- Member, Pesticides Appeal Board (1975-1978)
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges

Part-time Members

Jacquelyn Fraser *(appointment expires March 21, 2004)*

- Appointed as a member in 2001 and a resident of Norval, Ontario
- Environment and Resources Manager, Aggregate Producers' Association of Ontario (May 2000 – present)
- Project Manager, ESG International (May 1997 – May 2000)
- Sessional Instructor, Ontario Agricultural College, University of Guelph (September – December 1999)
- Master of Science (Land Resource Management and a Honours B.Sc. (Agr.)), University of Guelph

Gary A. Harron *(appointment expires March 12, 2006)*

- Appointed as a member in 2003 and a resident of Allenford, Ontario
- Graduated from the University of Guelph
- Owns and operates a 400 acre beef farm
- Member of the Ontario Municipal Board (1982 to present)
- Member of the Niagara Escarpment Commission (1973 to 1982)
- Several years municipal government experience as a member, Reeve and Warden
- Former exective in the insurance business
- Recipient of the Canadian Commemorative Medal on the 125th Anniversary of Confederation and the recipient of the Ontario Bicentennial Medal

Franco R. Mariotti *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Whitefish, Ontario
- He has travelled widely in North and South America, Iceland, and the Galapagos
- A founder of the Sudbury Naturalists' Club; active in social and environmentally-concerned groups
- A Biologist/Staff Scientist at Science North and manager of its Biosphere Exhibit since 1981

George W. Ozburn *(appointed "At Pleasure")*

- Appointed as a member in 1975 and a resident of Thunder Bay, Ontario
- Bachelor of Science degree in Agriculture (McGill); spent a year studying at Imperial College of Science and Technology in London (UK) prior to receiving his Ph.D. (Entomology and Toxicology) from McGill University, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- Worked in pesticide research for three years in West Africa followed by a university appointment in Michigan

- For many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- As Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

David A. B. Pearson *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Sudbury, Ontario
- Professor of Earth Sciences at Laurentian University
- Involved in research concerning lake water quality; leader of the Urban Lakes section of the Co-operative Fresh Water Ecology Unit at the university
- Took leave to be Project Director during the development of Science North 1980-1986, where he continues as Associate Director
- Past host of "Down to Earth" and "Understanding the Earth" TV series, and "Radio Lab" on CBC Northern Ontario Radio

Mary C. Schwass *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Tara, Ontario
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

Note: David Hutcheon's appointment expired in June, 2002.

Appendix C

Learning Program		
Date	**Topic**	**Speakers**
April 29, 2002	**Managing the Environment:** A New Vision for Environmental Protection in Ontario	Bob Breeze, Associate Deputy Minister, Ministry of the Environment
May 29, 2002	**Groundwater and Permits to take Water**	Steve Usher, Hydrogeologist, Gartner Lee Limited Jamie Connolly, Hydrogeologist, Ministry of the Environment
June 21, 2002	**Cap, Credit and Trade**	Terrance Stopps, Manager, Air Policy and Climate Change Branch, Ministry of the Environment Gray Taylor, Lawyer, Davies Ward Phillips & Vineberg
September 16, 2002	**Tour of the Niagara Escarpment**	Mark Frawley, Director, Ken Whitbread, Manager Niagara Escarpment Commission Len Gertler, former Vice-Chair of the Environmental Review Tribunal
November 27, 2002	**The Toronto Waterfront Revitalization**	Robert Fung, Chair Toronto Waterfront Revitalization Don Gorber, President SENES Consultants Limited
March 19, 2003	**Responses to the O'Connor Report**	Catherine Brown, Director, Strategic Policy Branch, Ministry of the Environment

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2003-2004

For more information on the Tribunal's performance goals and objectives refer to the Business Plan for 2003-2004.

1. Outreach
Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
Commitment #1: Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.	The Tribunal will conduct public information sessions prior to the commencement of its complex hearings. The Tribunal will continue to speak to other interested groups where the Tribunal's profile can be showcased.	Present to a growing number of key audiences.	To review its protocol on when to conduct public information sessions prior to scheduling a hearing. The Tribunal will use an electronic presentation and oral scripts to ensure consistency of information provided by different staff members at all public information sessions.
Commitment #2: Website Access The Tribunal will use its website to communicate with its clients.	The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the number of	Continued increase in the use and efficiency of the site.	The information contained on the website will be reviewed and improvements made to ensure

	visitors to the site to monitor its use.		ease of use for the public.
			The website will be updated each business day to ensure optimal delivery. Any amendments to the Rules of Practice, Practice Directions and Guidelines, etc. will be posted as approved.
Commitment #3: Guides will be updated electronically and in paper form.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency of information.	Continued communication of the hearing process to the Tribunal's clients.	To review and revise the guides as changes to governing legislation and policies arise.

2. Alternative Dispute Resolution Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
Commitment #4: ADR Services Offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation meetings will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the ADR session

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Core Business

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			to ascertain their level of satisfaction with the ADR process and the Tribunal's involvement. The Tribunal will monitor the success of mediation meetings by tracking the cases that are resolved prior to the hearing.

3. Staff Processing of Hearings
Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/ documentation from the parties.	Staff will adhere to the target.

4. Hearing and Decision Making Core Business

Goals/Outcomes	Measures	Targets/Standards	2003-2004 Commitments
Commitment #6: Tribunal members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #7: Tribunal members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines.	In 90% of hearings held, Tribunal members will adhere to the target.
Commitment #8: Training of members.	Members will receive adequate training to conduct hearings.	Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal rules, decision writing and alternative dispute resolution.	New members are trained to conduct hearings independently within one year of appointment.
Commitment #9: Appeals and judicial review of Tribunal Decisions.	The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.	Review and analyze the outcome of any appeal of its decisions or judicial review applications.	The Tribunal will summarize any decision of appeal or judicial review in its Annual Report and review Tribunal practices in light of any decisions of appeal.

			to ascertain their level of satisfaction with the ADR process and the Tribunal's involvement The Tribunal will monitor the success of mediation meetings by tracking the cases that are resolved prior to the hearing.

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Appendix E
Website Statistics – Downloads
During the period April 1, 2002 to March 31, 2003

Most Popular Downloads – Entire ERT Website:

File Name	Downloads
Ontario Water Resources Act	11,992
Environmental Protection Act	6,852
Environmental Assessment Act	4,411
Rules of Practice	2,015
The Corporation of the Township of Tiny v. MOE	1,659
The Corporation of the District of Muskoka v. MOE	1,615
Practice Directions	1,559
Ontario Power Generation v. MOE	1,387
Ellen Smith et al. v. MOE	1,255
Environmental Assessment Brochures (Guides)	1,192
Greig et al. v. MOE	1,101
Annual Report 1999-2000 (most current version released at time)	1,082

Appendix F

Financial Report
2002-2003

General Account for the Operation of the Tribunal:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages	$ 933,500	$ 933,500	$ 878,532
Employee Benefits	160,000	160,000	155,274
Transportation and Communication	125,900	125,900	124,423
Services	273,800	273,800	228,329
Supplies and Equipment	56,100	56,100	105,506
Total	$1,549,300	$1,549,300	$1,492,064

Additional Funds allocated for the Water Projection & Regulation Initiative:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communication	$ 20,000	$ 11,500	$ 7,275
Services	$ 160,000	$ 30,700	$ 29,277
Supplies and Equipment	$ 20,000	$ 1,000	$ 0
Total	$ 200,000	$ 43,200	$ 36,552

Note: **The Tribunal was allocated $37,300 for the *Nutrient Management Act* and $200,000 for the Walkerton Inquiry Report – Part 1. The funds for these allocations were assigned to Direct Operating Expenditures. The Tribunal did not incur any expenditures under these accounts.**

Appendix G

Contact Information

For further information about this report or the Environmental Review Tribunal contact:

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Environmental Review Tribunal
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Website: www.ert.gov.on.ca